

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X

WILHELMSSEN PREMIER MARINE FUELS AS

07 Civ. 5798 (CM)

Plaintiff,

against

UBS PROVEDORES PTY LTD. AND  
RAECORP INTERNATIONAL PTY LTD.,

Defendants

**ATTORNEY CERTIFICATION  
OF JEANNE-MARIE  
VAN HEMMEN IN OPPOSITION  
TO PLAINTIFF'S MOTION  
TO VACATE THE DISMISSAL ORDER**

X

Jeanne-Marie Van Hemmen, hereby certifies, under penalty of perjury, that:

1. I am a partner at the law firm Betancourt, Van Hemmen, Greco & Kenyon, which represents Defendants UBS Provedores Pty. Ltd. and Raecorp. International Pty. Ltd. ( collectively, "UBS") in the captioned matter. I am responsible for the handling of this file and am, therefore, fully familiar with the facts and circumstances before this Court. I submit this certification in support of UBS' opposition to Plaintiff's Motion to Vacate this Court's January 14, 2008 Dismissal Order.
2. Attached as Exhibit 1 is a true and correct copy of the Settlement Agreement and Release entered into between the parties on or about October 22, 2007.
3. It is UBS' position that the terms of the Settlement Agreement and Release govern the issue currently before the Court and that what was said during negotiations of the Settlement Agreement are irrelevant. However, due to the detailed affidavit of Mr. Frevola attesting to facts surrounding those negotiations, I am compelled to respond to the extent my recollection of those facts differ:
  - Negotiations of the Settlement Agreement occurred between Tuesday, October 16, 2007 and Monday, October 22, 2007.

- I disagree with Mr. Frevola's characterization of UBS' reason for striking the proposed provision that the Settlement Agreement would be rendered null and void if Wilhelmsen did not receive the Initial Payment by a specified time. My concern was that UBS had no control over the Initial Payment and should not be penalized by the banks' failure to make it. I have no recollection of my raising the possibility that the funds could be attached by another creditor. I do recollect that was a concern of Mr. Frevola who raised the possibility on numerous occasions and indicated it was one of Wilhelmsen's motivating factors in reaching a settlement with UBS. At the time of these negotiations, I was unaware of the Australian Bunkering attachment.
- Citibank did not release the \$44,000 attachment to Betancourt, Van Hemmen, Greco & Kenyon's attorney trust account.

4. A review of the Settlement Agreement establishes that the provision of correspondence related to UBS' U.S. Government Claims is not a condition precedent of Wilhelmsen's dismissal of the case with prejudice, which they are required to do three days after receipt of the Second Payment. Notwithstanding that, today I forwarded to counsel for Wilhelmsen correspondence between UBS and the U.S. Government concerning the UBS' U.S. Government Claim.

5. I was wholly unaware of Wilhelmsen's objections to entry of the Order of Dismissal when I submitted it to the Court.

Pursuant to 28 United States Code §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in Red Bank, NJ on February 1, 2008.

\_\_\_\_\_/s/\_\_\_\_\_  
Jeanne-Marie Van Hemmen (JV 6414)